



**ZONING BOARD OF APPEALS  
RICHARD D. CARNEY MUNICIPAL OFFICE BUILDING  
100 MAPLE AVENUE  
SHREWSBURY, MASSACHUSETTS 01545-5398**

April 29, 2003

EXECUTIVE SESSION: Stephen and Margaret Aulenback, 150 Spring Street, Shrewsbury.

PURPOSE: To review and consider the proposal by Atty. Jonathan Finkelstein regarding the appeal of Stephen and Margaret Aulenback, 150 Spring Street, in accordance with the approval of the Worcester Superior Court to remand this case to the board for further action.

PRESENT: Ronald I. Rosen, Chairman Pro-tem, Paul M. George, Melvin P. Gordon, Jonathan B. Wright and Ronald S. Alarie, Building Inspector.

Atty. Leader: I would ask that we go into executive session to discuss this appeal.

Mr. Gordon: I move to go into executive session.

Mr. Wright: I second it.

Mr. Rosen: We have to do a roll call. All those in favor, please indicate by saying "yes."

Mr. Gordon: Yes.

Mr. Rosen: Yes.

Mr. George: Yes.

Mr. Wright: Yes.

Mr. Alarie: Phil, I'm sorry, but the purpose of going into executive session was to discuss litigation?

Atty. Leader: To discuss the pending litigation. Are we now in executive session?

Mr. Rosen: We are.

Atty. Leader: Great. I have come here tonight at my request which was engendered by the litigation that I would like to discuss, the case called "Aulenback and the Board of Appeals" which is an appeal that's in the superior court from denial of a special permit regarding the house on, I don't know the address, Ron do you?

Mr. Alarie: Its 150 Spring Street.

Atty. Leader: Yes, 150 Spring Street. It was a request and a petition filed here for an in-law apartment which was denied. The denial was appealed to the Superior Court where it is pending. I was approached some time ago by Mr. Jonathan Finkelstein, who represents the Aulenbacks, with a proposal for a settlement of the case. He sent me a letter which I have here.

Mr. Gordon: Is that the one from the 18<sup>th</sup>?

Atty. Leader: This is the one of April 18<sup>th</sup>, yes, which I think you have all seen or been told of. The proposal, and I want to emphasize that it is a proposal, is that the Aulenbacks propose that the board of appeals reconsider their earlier action and issue a special permit under the bylaw for an in-law apartment subject to a couple of conditions. As you probably know, the house is under construction or is constructed, I'm not quite sure at what state it's at, without the in-law apartment. Externally, it's as it's going to be. There were some plans filed with the building inspector after the building permit was issued which directly relate to the design of the in-law apartment.

The first condition would be that, if the board reconsidered it and you should permit that, the permit would be strictly in accordance with those plans which Mr. Alarie presently has on file which I think you have all seen. I know you have all seen them, but I think you are all familiar with them.

Mr. Alarie: Actually, Phil, those were submitted to the board at the night of the public hearing. I'll pass them around as they show the proposed in-law arrangement.

Mr. George: I didn't sit on this hearing.

Atty. Leader: Well, this is a matter of procedure, which Mr. Alarie is aware of. I know you did not. I guess the other 3 members present did. That doesn't make any difference. Currently, this is "The Board" and, whether or not you did sit, it's the action of the Board of Appeals as remanded by the superior court. So, it's permissible for the board members who are here to act now, even though this is not the same board or the same 5 people.

The other condition would be that this special permit, if issued, would be what we would call "personal to Mr. Aulenback's mother-in-law", whose name is Pauline Best. In other words, in the ordinary course if you were to issue a special permit or a variance, it would run with the land, but a special permit would be there. If the Aulenbacks were to sell the house, somebody else could use that. Actually, there are limitations in the bylaw for the use of an in-law apartment. You could probably recite them better than I, Ron. You have to be an in-law or a blood relative.

Mr. Alarie: It's could only be occupied by 3 or less individuals, all of whom must be related to the principal occupants of the premises.

Atty. Leader: Those conditions, of course, would apply anyway. But, for instance, let's say the Aulenbacks were to sell the house next week or next year and there was a special permit. Somebody else could occupy it as an in-law apartment. The condition that would be imposed here would be that it would be used only by this particular person, Mrs. Beck. It would expire upon her non-use.

Mr. Rosen: The only question I would have would be determining if she still lives there. Other than through her death or them selling house, what would be considered her non-use?

Mr. Gordon: Moving out.

Mr. Rosen: Okay.

Atty. Leader: I think it's a polite way of saying for her life. He just phrased it that way. Literally, if she moved out, it would expire. So, he's phrased it in a way personal to Mrs. Aulenback's mother, Pauline Best, with the permit expiring upon her ceasing to occupy that specially permitted area within the house. So, if she decided to vacate or decided that she was going to move into one of the spare bedrooms and not occupy that part of the house, theoretically, that would be the expiration of it. I don't know how any of us would know of that and I don't think anybody would be interested. But, if they did sell the house, the new people would not have a right to do that in-law apartment. So, procedurally, Mr. Finkelstein wrote this letter and I said that I would present it to the board. I told him that's all I can do and that I don't know how anybody is going to vote and that I would present it. The only way we can do that is to, and we did, file a motion in the Superior Court which I will read to you, which I intended to file, that said from the plaintiff, Steven and Margaret Aulenback, by their attorney, Mr. Finkelstein, to move that the court permit the case to be remanded, that means sent back, to the Board of Appeals for further action. I assented to that. That means that in fact if further action. If you don't see fit to accept his proposal then it would go back into the Superior Court and we'd go on our merry way. I don't know the answer. If you ask me how long it would take, I don't know.

Mr. George: What was the reason for the denial anyway?

Mr. Rosen: That's a good question. Ron?

Mr. Alarie: I can read to you part of the decision. It was denied on a 3 to 2 vote, 3 in favor, 2 opposed. "Two members of the board were of the opinion that the inclusion of an additional dwelling unit upon the property which was recently subdivided from the original house lot would adversely impact the welfare of area residents due to increased traffic. It was their opinion that the granting of a special permit would conflict with the intent of the bylaw and, therefore, voted to deny the appeal." If you remember, we also had a special meeting on or about December 23<sup>rd</sup>. The Aulenbacks requested that the board reconsider their decision. At that time, they asked for an explanation. I think Mr. Rosen asked the other 2 members of the board their reasons, to include in the decision, for their denial. I think that, for both of them, it basically came down to a question of increased traffic. That for that reason they voted to deny it and I think the opposition of Mr. Ballou was cited.

Mr. George: He was the only one in opposition?

Mr. Alarie: No, I recall that they submitted a petition that night with several names on it.

Mr. Gordon: If I remember correctly, the main concern, the neighbor's concern, not the board's, was that this was going to be more like a 2-family house. I didn't see it that way because it's inside the structure and there wasn't going to be more than 1 person there.

Mr. Rosen: My issue with their concern about increased traffic was that she has a right to live there whether or not it's an in-law apartment. It doesn't affect the traffic.

Mr. George: Right. Even if she went there to visit, she would still be going back and forth.

Mr. Gordon: She could move in there.

Mr. Rosen: She could move in without an in-law apartment.

Mr. Gordon: Without what? If there wasn't a kitchen, she could move into it and say nothing to us.

Mr. Rosen: Right.

Mr. Gordon: I was of the opinion that this was a reasonable use as an in-law apartment and that's why I voted for it 3 times.

Mr. George: Mel, there's only one concern that I have, that you probably said, that they could go in front of the Planning Board.

Mr. Gordon: Well, one of the ways that they could have done it is they can appeal to the Planning Board and then the Planning Board sends it back to you if it's 4 votes.

Mr. Alarie: It would still require authorization from the Zoning Board of Appeals.

Mr. Wright: Ultimately, it comes back to you. It beats the 2-year limit.

Mr. Gordon: I'm of the opinion that the Aulenbacks have asked for less than they might have been given. I would hope that we would reconsider it because, if this is only a lifetime thing, they've cut the value of the house because, once they go to sell the house, they have to either come in for another special permit or take the in-law apartment out. Most in-law apartments we grant stay with the house. There is no additional traffic. Of course, you can't drive up Spring Street now anyway until Bob Cole fixes it. I would hope that we would reconsider it.

Mr. Wright: So, tonight are we voting on a special permit with a condition? Are we voting just to accept the agreement?

Atty. Leader: No, it's not an agreement, it's a proposal. I think the specific answer to the question is you would vote to further consider this special permit. If you granted it, it would be with those 2 conditions which are acceptable to them if they are acceptable to the board.

Mr. Rosen: Can we procedurally do that if it's already been voted down?

Mr. Gordon: Yes, we're reconsidering it.

Atty. Leader: We have an order of the Superior Court, which was done by agreement. But, none the less, it's an order remanding it here for further consideration.

Mr. Rosen: Okay. My concern was the neighbors.

Atty. Leader: I'm confident that the neighbors will not raise any objections. What would happen is procedurally, after you vote and, in due course, there would be a decision, an opinion signed and everything filed.

Mr. Gordon: Then, someone could appeal it.

Atty. Leader: We would have to run through another 20 days. That's live. If somebody appeals, somebody appeals. We're no worse off than we were before,

if you want to look at it that way. Mr. Gordon is correct that this is less than an ordinary issuance of a permit.

Mr. Rosen: Right. I don't have an issue.

Mr. Gordon: And this is going to be done without prejudice?

Atty. Leader: Well, I don't know what that means.

Mr. Gordon: They're not going to be coming back and look for costs from the board?

Atty. Leader: Oh no, no.

Mr. Gordon: They just want this done and over with?

Atty. Leader: Correct, that's right.

Mr. Wright: One other question. Is the applicant of the opinion that this will prevent an appeal? This is, maybe, what the neighbors wanted as opposed to giving them the special permit without the conditions.

Atty. Leader: I'm confident of it. I have informally polled the neighbors.

Mr. Gordon: You would like it to go through as written?

Atty. Leader: Well, I can only say to you it is what's being proposed.

Mr. Gordon: You think it would be a good idea?

Atty. Leader: I think it would be a good idea. I think it will settle it. I'm sure it will settle it.

Mr. Rosen: So, this without modification?

Mr. Gordon: That's it without any modifications.

Atty. Leader: Well, that's right. You need to vote to reconsider if you do want to reconsider it. Then you'll vote on issuing the permit with 2 conditions, that it be personal to Mrs. Best and that it would be in accordance with the plans on file. Of course, I think it would have to be in accordance with the plans anyway because we don't have any others.

Mr. Gordon: I'll make a motion.

Mr. George: I would like to ask one thing before we make a motion. Is there anything we could do as a board to make that driveway a little safer?

Mr. Gordon: They're going to come to us for a common driveway.

Mr. George: So, that will be taken care of before the Planning Board?

Mr. Gordon: Well, it'll be heard and there are rules on a common driveway. Those rules will be taken into consideration. They know that. They've already said that.

Mr. George: That's the only concern I have.

Mr. Gordon: Actually, when they come to a common driveway, it will be much safer than 2 individual driveways.

Mr. Rosen: Do you want to make a motion?

Mr. Gordon: I would move for reconsideration.

Mr. Wright: Second.

Mr. Rosen: All in favor.

Mr. Gordon: Yes.

Mr. Rosen: Yes.

Mr. George: Yes.

Mr. Wright: Yes.

Mr. Gordon: I would move that we grant a special permit at 150 Spring Street personal to Mrs. Aulenback's mother, Pauline Best, and that the permit expire upon her ceasing to occupy the specially permitted area in the house and that this be in accordance with a plan that was submitted when filed.

Mr. Wright: I second the motion.

Mr. Rosen: All in favor.

Mr. Gordon: Yes.

Mr. Rosen: Yes.

Mr. George: Yes.

Mr. Wright: Yes.

Mr. Rosen: Okay, it' done.

Mr. Gordon: You've done a great job.

Atty. Leader: I think it will solve the neighborhood issues.

Mr. Gordon: Yes, the neighborhood issue will be over.

Mr. George: Phil, did you speak with any of the neighbors?

Atty. Leader: Not directly, but I know that Mr. Ballou came in to look at the plans early last week.

Mr. Alarie: That was yesterday or Friday afternoon.

Ms. Lane: It was Friday afternoon.

Mr. Gordon: He was one of the candidates for this board when I was listening last night.

Mr. Alarie: I have a vote sheet to circulate around. We'll prepare the minutes of the executive secession, file them with the Town Clerk and send out notice to the abutters.

Mr. George: Mel, when do they have the hearing on the common driveway?

Mr. Gordon: They haven't filed for it.

Mr. George: They haven't?

Mr. Gordon: That will be right after they file for it. I would assume that it would be late spring or early summer if they're going to do it. I think everyone is waiting for Bobby Cole to finish the street.

### Decision

On April 29, 2003 the Zoning Board of Appeals unanimously voted to reconsider the request of Stephen and Margaret Aulenback, 150 Spring Street, Shrewsbury, for a special permit to allow the occupancy of a portion of the single family home they are currently constructing upon the subject property as an in-law apartment. This action was taken as authorized by the Worcester Superior Court in the matter of the Aulenbacks' appeal of the board's decision of December 17, 2002.



Upon reconsideration of Mr. and Mrs. Aulenback's request, the board found that the inclusion of in-law apartment arranged above the attached garage of the aforementioned residence was consistent with the intent of the Zoning Bylaw in permitting such accessory living accommodations to be provided within or attached to a single family home. It was their opinion that the occupancy of the apartment by Mrs. Aulenback's mother would not create any condition that would be harmful or injurious to the welfare of either the general public or area residents and, therefore, unanimously voted to grant the special permit subject to the following stipulations:

1. The in-law apartment shall only be occupied by Mrs. Aulenback's mother, Ms. Pauline Best, and the rights authorized by this granting shall expire when she ceases to occupy said apartment.
2. The in-law apartment shall be located, configured and arranged substantially in accordance with the plans on file with the Zoning Board of appeals.

Vote

Mr. Rosen	Yes
Mr. George	Yes
Mr. Gordon	Yes
Mr. Wright	Yes

PUBLIC HEARING: David F. Guba, 36 Bay View Drive, Shrewsbury, MA.

PURPOSE: To hear the appeal of David F. Guba, 36 Bay View Drive, Shrewsbury, MA, for a special permit as required by the Town of Shrewsbury Zoning Bylaw, Section IV, Subsection B, to allow the removal and the replacement of the single family dwelling situated upon property located at 36 Bay View Drive. The subject premises is described on the Shrewsbury Assessor's Tax Plate 57 as Plot 14.

PRESENT: Anthony M. Salerno, Chairman, Paul M. George, Melvin P. Gordon, Ronald I Rosen, Jonathan B. Wright and Ronald S. Alarie, Building Inspector.

Mr. Salerno opened the hearing by reading the advertisement as it appeared in the Worcester Telegram on April 14, 2003 and April 21, 2003.

Mr. Salerno: Please identify yourself for the audio record and make your presentation.

Mr. Guba: My name is David Guba. I live at 36 Bay View Drive in Shrewsbury. I was applying for a variance to tear down my house and put up a new house on

my property. The house that I currently have now is not within the town criteria. It's too close to the street. It's at an off angle. When I put up my new house, I would like to make it comply with all of the setbacks and everything that the town requires. I went with this rather than an addition because the house is too close to the street. I would rather do it right and have everything the way it's supposed to be. I've gone to every one of my neighbors. Everyone is in favor of it. They are actually overjoyed because the house is sort of an eyesore. I have some pictures here.

Mr. Salerno: Sure, why don't you bring them forward. Give them to the clerk. He'll distribute them.

Mr. Guba: The new house I plan on building doesn't take up that much more room on the property but it is set parallel to the street.

Mr. George: Do you have any plans for the new home?

Mr. Guba: Yes, I have plans here.

Mr. Guba showed the plans to the board members.

Mr. Wright: It looks like a raised Ranch?

Mr. Guba: Yes, it's a raised Ranch.

Mr. Salerno: Not to oversimplify your petition, Mr. Guba, but what you're asking to do is just to remove a structure and put one back up that is actually going to gain setbacks for your neighbors and fall more in compliance with the zoning bylaw?

Mr. Guba: Yes.

Mr. Gordon: Ron, will it still be nonconforming?

Mr. Alarie: Well, the reason he's here is because the lot is nonconforming. Once you remove a structure, you've lost the grandfathered rights. That's the basic reason why he's here. As an added benefit that he's pointed out, he's bringing the structure into conformance with the applicable setbacks.

Mr. Salerno: Are you stick building or is it modular?

Mr. Guba: It's prefabricated.

Mr. Salerno: So, you won't have a big delay then?

Mr. Guba: No.

Mr. Salerno: Is there an effort to save the trees and the green cover? You just didn't have it centered on the lot to best place the foundation?

Mr. Guba: Yes, the reason it's set there is that it fits on the lot better and I have already planted trees which would center with the house.

Mr. Salerno: Do any board members have any questions?

Mr. Gordon: It looks like there is a shed behind the house. Will that be going? There is a shed behind the house on the left-hand side. Is that going to go or stay?

Mr. Guba: That's going to stay.

Mr. Salerno: Is there anybody in attendance this evening that wants to comment on this petition? You did such a good job that there are no questions to be answered. We'll take it under advisement and notify you of our decision.

#### Decision

On April 29, 2003 the Zoning Board of Appeals unanimously voted to grant the appeal of David F. Guba, 36 Bay View Drive, Shrewsbury, MA, for a special permit as required by the Town of Shrewsbury Zoning Bylaw, Section IV, Subsection B, to allow the removal and the replacement of the single family dwelling situated upon property located at 36 Bay View Drive.

The appellant proposes to demolish the single family dwelling situated upon the subject property and, in its place, will construct a new home of modular design. The new structure will be sited in accordance with the current minimum setbacks and the property, as a whole, will conform with all applicable dimensional requirements except for its nonconforming land area.

Upon review of this appeal, the board found that the improvements proposed by Mr. Guba will lessen the nonconforming features of this property and that, overall, the removal of the existing older structure and its replacement with a new, modern residence would greatly enhance the premises. It was their opinion that the completed project would benefit both the interest and the welfare of the neighborhood and its residents and it was, therefore, unanimously voted to grant the appeal as presented to the board.

#### Vote

Mr. Salerno	Yes
Mr. George	Yes
Mr. Gordon	Yes

Mr. Rosen  
Mr. Wright

Yes  
Yes

PUBLIC HEARING: Martin and Sally Hayes, 39 Bumble Bee Circle, Shrewsbury, MA.

PURPOSE: To hear the appeal of Martin and Sally Hayes, 39 Bumble Bee Circle, Shrewsbury, MA, for a special permit as required by the Town of Shrewsbury Zoning Bylaw, Section IV, Subsection B, to allow the construction of an addition upon property located at 39 Bumble Bee Circle maintaining the existing front yard setback of said property. The subject premises is described on the Shrewsbury Assessor's Tax Plate 30 as Plot 26.

PRESENT: Anthony M. Salerno, Chairman, Paul M. George, Melvin P. Gordon, Bridget M. Murphy, Ronald I. Rosen and Ronald S. Alarie, Building Inspector.

Mr. Salerno opened the hearing by reading the advertisement as it appeared in the Worcester Telegram on April 14, 2003 and April 21, 2003.

Mr. Salerno: Please identify yourself for the audio record and make your presentation.

Mr. Hayes: My name is Martin Hayes of 39 Bumble Bee Circle in Shrewsbury. Before we get started, my wife has changed her mind. What I had proposed to you earlier was a 2-car garage with a room over. But, what we would like to do, if possible, is still have the garage on that side and then put a room on the other side of the existing house and set it back the 2 ft. I have an additional schematic if you want it.

Mr. Salerno: Well, maybe you can clarify that for us, Mr. Hayes, because there are some procedural things we may have to review. What you have submitted to Mr. Alarie's office and what is placed on the agenda, is that what you're asking for relief for tonight or are there additional changes to that?

Mr. Hayes: Well, the garage remains the same. Initially, we had the garage that would just continue with the same foundation, the same distance and, initially, to put a room above it. What we would like to do, if possible, is keep the garage without having a room above it on the same side and, on the other side of the existing house, is have a room that is set back 2 ft. from the existing foundation.

Mr. Salerno: But you didn't submit that in your original petition?

Mr. Hayes: No, all I did was request the garage with the room over it and then she changed her mind.

Mr. Gordon: All we can hear is what's been advertised.

Mr. Salerno: Right.

Mr. Alarie: What was advertised was to allow the construction of an addition maintaining the same front yard setback.

Mr. Hayes: Right. The additional one would actually be set back behind the addition.

Mr. Salerno: What kind of notice did the abutters get, Ron?

Mr. Alarie: Basically, it states that they propose the construction of an addition maintaining the existing front yard set back. You're still dealing with the same issue as far as maintaining the existing setback of 27 ft. as opposed to the 30 ft. required. The garage, as I understand it, would remain at the 27 ft., but the addition to the right-hand side of the house would be at 29 ft.?

Mr. Hayes: Right.

Mr. Rosen: How about the side yard setback?

Mr. Alarie: He has not asked for any relief from the side yard.

Mr. Rosen: So, it's still all just the front yard setback?

Mr. Alarie: It's all relating to that front yard, the existing, nonconforming front yard setback.

Mr. Salerno: Sir, you have 25 ft. on the left side?

Mr. Hayes: Yes, on the 25 ft. side, it would be going out either 14 or 15 ft. which would give me either 10 or 11 ft., which is what we need. It would set back 2 ft. from the existing foundation.

Mr. Salerno: But, you don't have plans showing the design of that?

Mr. Hayes: All I have is what I've drawn up. It's similar to that. I don't have any professional designs, no. Originally, when we first started, that was what we were going to do. Then she said "why don't we go above?" Actually, the neighbors knew that before they knew the garage above. None of my neighbors have any problem with that. It was actually to keep the aspect of a Ranch rather than a second story as part of a Ranch. It's a little bit more aesthetic.

Mr. George: Do you have a sketch?

Mr. Hayes: Yes, I drew up some.

Mr. Salerno: So, just to clarify things again, Mr. Hayes. Your initial request was to put the garage onto the left of the house, if you're facing it from the street, and to have a second story or a room above the garage on the initial plans?

Mr. Hayes: That's correct.

Mr. Salerno: Now you want to modify that and not have a room above the garage, but in fact, put an addition to the right of the house?

Mr. Hayes: Right. Instead of the room being above the garage, it would be off, as you look at it, to the right.

Mr. Salerno: What will be above the garage?

Mr. Hayes: Nothing. It will just be a garage.

Mr. Salerno: Where will the roofline be on the garage?

Mr. Hayes: It would actually be just under the existing one going back into the line either at it or just below it. So, it wouldn't be any higher than the existing structure.

Mr. Gordon: So, you have no plans to put a second story on the structure?

Mr. Hayes: No. As far as she was concerned it was a bad idea on my part.

Mr. Wright: Now the plan would be to have the rooflines all essentially the same as opposed to having the garage roof elevated above the rest of the house and to balance it out with the garage on one side and the room on the other?

Mr. Hayes: Correct, that's exactly right.

Mr. Salerno: I know it's semantics. I'm just a little uncomfortable with a significant modification at this stage of a request. That's what I'm having trouble with.

Mr. Gordon: When would you plan to build this?

Mr. Hayes: It depends on whether you people allow us to. It would hopefully be sometime this summer.

Mr. Gordon: Would 30 days make a difference to you?

Mr. Hayes: It may to my contractor, yes.

Mr. Gordon: I would be more comfortable if this were withdrawn and re-advertised so that if the neighbors, not us, but the neighbors, had a problem with it, we would know about it. That's the purpose of a public hearing.

Mr. Hayes: Well, if I may. As far as my immediate neighbors are concerned, and they all asked me if they needed to be here and I said "only if you had any objections," this was the plan that they we told them that I was going to try to do to begin with.

Mr. Gordon: Ron, would the ad read exactly the same?

Mr. Alarie: It would read exactly the same.

Mr. Salerno: Again, somebody may not be that opposed to it if it was just going to be a garage on one side. As much as we want to help you with your rights, we don't want to foreclose somebody from their rights either.

Mr. Hayes: I understand that completely. It's only my word.

Mr. Salerno: Oh no, that's not what we're questioning. It's just a matter of trying to be efficient too with the town resources and not have to re-advertise, rehear it and everything else. In all of my years here, substantial changes like this made at the 11<sup>th</sup> hour have usually been a cause for concern. Not that it's probably going to change things, but I hate to risk it. That is what I'm saying.

Mr. Gordon: The ad's going to be exactly the same. Assuming that we approved it, the neighbor who might not like it has the right of appeal.

Mr. Salerno: They do. It's also a costly one. They also have the right to be here and be heard.

Mr. Rosen: They wouldn't have any additional notice if the ad's exactly the same.

Mr. Salerno: It's a substantial addition to the side of the house. It could go through without any hesitation. I'm just concerned about procedurally allowing changes of this nature to occur at the 11<sup>th</sup> hour.

Mr. Hayes: I understand. Like I said, there was a misstatement as to the notification to us. All my neighbors came and said how can we come to an April meeting if it's going to be in March. I said well, it's going to be the 29<sup>th</sup>. This is what we're doing.

Mr. Salerno: By the way, I would tell you the board's position has always been to encourage people to first go to their neighbors before they come to us.

Mr. Hayes: Right. Most of them, almost everyone that I know that reached the 300 ft. or whatever, came to me and said "Do you need us to be there." I said "I think that, unless you have an objection, you don't need to be there."

Mr. Salerno: Sure.

Mr. Wright: If we consider this tonight in its original form for essentially the other part, could he come back at another time for the other room? You're only looking for a foot. You could set it back 3 ft. as opposed to 2 ft.

Mr. Hayes: I could.

Mr. Wright: You could just push it back to go from 29 ft. to 30 ft.

Mr. Hayes: If I did that I wouldn't need the withdraw and come back?

Mr. Wright: You wouldn't have to come back a second time if you make it 3 ft. off of the existing house at the corner. Then you would be 30 ft. back from the road.

Mr. Hayes: He just suggested that too. Again, this is my fault, obviously, for not knowing the politics.

Mr. Wright: Maybe we should just consider it in its original form?

Mr. Hayes: So, it would be considered on the original and as long as I set back the 3 ft. it meets the 30 ft.?

Mr. Wright: You don't have to come back for that.

Mr. Gordon: Is that correct?

Mr. Alarie: Sure. If he is compliance, he has the right to construct it.

Mr. Gordon: As long as he doesn't exceed the percentage?

Mr. Salerno: He's got the side yard. At least on the diagram, you're right at the 10 ft. on the side yard?

Mr. Hayes: Well, that's what I said. It could be 14 ft. wide. If I could get 15 ft., obviously, I would like 15 ft. If I need to go 14 ft., I'd kick it back to 14 ft. It's easier for the construction. Basically, it would be whatever you tell me.



Mr. Gordon: If you were going back another foot, you would probably want to stay at 15 ft.

Mr. Hayes: That's what I would like to do.

Mr. Salerno: Again, as Mr. Gordon suggested, if we approve what's before us this evening, you have the right to come back for a request again. As soon as you can back on the agenda, you could do the other side as you proposed tonight. You can modify your plans and not come back again at all.

Mr. Hayes: Well, to be honest with you, if it was okayed, I wouldn't come back for 1 ft. I would rather have my contractor get up and go. I mean, he may turn around and say "go back."

Mr. Salerno: Yes, consult with him structurally and know what's going on.

Mr. Gordon: So, we're going to hear the original drawing. I would be most comfortable hearing the original. I can understand that there may not be a difference in the other, but I agree with you that there may be one neighbor that might not have liked it if he had the other addition in there too. Whereas, if he does it in conformance, he doesn't need anybody else's permission and we can deal with the relief on this side.

Mr. Salerno: And, it allows you the option to come back and get it if you so choose.

Mr. Gordon: You could come back for the other foot if you find you so need it.

Mr. Salerno: Again, we're trying to balance everybody's rights and not really impede anybody's either.

Mr. Hayes: I understand.

Mr. Salerno: Do any board members have any questions? Is there anybody in attendance this evening that wants to comment on this petition? Seeing no further comment, we'll take the matter under advisement, vote at the end of the meeting and notify you of our decision.

#### Decision

On April 20, 2003 the Zoning Board of Appeals unanimously voted to grant the appeal of Martin and Sally Hayes, 39 Bumble Bee Circle, Shrewsbury, MA, for a special permit as required by the Town of Shrewsbury Zoning Bylaw, Section IV, Subsection B, to allow the construction of an addition upon property located at 39 Bumble Bee Circle maintaining the existing front yard setback of said property.

The appellants propose to construct an attached garage to the westerly side of their home that would laterally extend their nonconforming front yard setback of 27 ft. The board noted that the existing structure actually sits approximately 37 ft. from the actual edge of the traveled way and that, visually, it appears to conform to the minimum setback. It

was their opinion that the placement of this addition would not materially alter the property's nonconforming character and that it would not adversely affect the welfare of area residents. It was, therefore, unanimously voted to grant a special permit to allow the construction of the aforementioned garage.

#### Vote

Mr. Salerno	Yes
Mr. George	Yes
Mr. Gordon	Yes
Mr. Rosen	Yes
Mr. Wright	Yes

PUBLIC HEARING: Paul and Sharon Laramee, 57 Hillside Drive, Shrewsbury, MA.

PURPOSE: To hear the appeal of Paul and Sharon Laramee, 57 Hillside Drive, Shrewsbury, MA, for a variance to the Town of Shrewsbury Zoning Bylaw, Section VII, Table II, Minimum Side Yard Requirement, Residence B-1 District, to allow the construction of an addition 8 ft. from the side lot line of property located at 57 Hillside Drive. The subject premises is described on the Shrewsbury Assessor's Tax Plate 40 as Plot 173.

PRESENT: Anthony M. Salerno, Chairman, Paul M. George, Melvin P. Gordon, Ronald I. Rosen, Jonathan B. Wright and Ronald S. Alarie, Building Inspector.

Mr. Salerno opened the hearing by reading the advertisement as it appeared in the Worcester Telegram on April 14, 2003 and April 21, 2003.

Mr. Salerno: Please identify yourself for the audio record and make your presentation.

Ms. Laramee: I'm Sharon Laramee of 57 Hillside Drive in Shrewsbury.

Mr. Meader: I'm John Meader, the contractor.

Ms. Laramée: We are going to have to go where we are in the back of the house because, first of all, we have to have a wall there. You can't see it, but the back to the bathroom and the closet in the bedroom area has to be along that wall for the kitchen. Also, I don't want to cover my bathroom window in my existing house because of ventilation problems.

Mr. Salerno: The window serves as your vent in that bathroom?

Ms. Laramée: Well, right now it is, yes.

Mr. Salerno: Okay. Ron, it's our understanding that, to meet code in a bathroom, if it doesn't have a vent, it has to have a window?

Mr. Alarie: No. In all cases, whether it has a window or not, it now needs to have a vent as well.

Mr. Salerno: At one time, did it read the other way?

Mr. Alarie: Prior to the current edition of the State Building Code, if it didn't have a window, it had to have some type of mechanical ventilation.

Ms. Laramée: Also, if you look, you'll see the way the lot line is and the way the house is sitting. The driveway is on my neighbor's property. It's just the way the lot is.

Mr. Meader: The bigger plan actually shows it. That's really dictated by the bathroom. We're trying to work around the existing bathroom and tying it back into the house. We're wrapping around an existing fireplace as well and a deck.

Mr. George: Do you have any plans besides that? Something that shows what the structure will look like?

Mr. Meader: Yes, it's shown on the second page.

Mr. Gordon: You were saying that the hardship is in the land?

Mr. Meader: It's in the lay of the land, the cut of the lot. It's really a tough lot to work in with a square building.

Mr. Gordon: It would be very difficult to put this room anywhere else?

Mr. Meader: Yes, it wouldn't work with the property and the lay of the house plus the flow of the floor plan.

Mr. Salerno: If I understand your request, it's only the corner of the proposed addition that's actually going to break the setback barrier?

Mr. Meader: It's just clipping the corner.

Mr. Salerno: It's just clipping the corner?

Mr. Meader: It's not even a full 2 ft.

Mr. Salerno: So, it's just this little corner here that's actually going to break the setback barrier?

Mr. Meader: Correct.

Mr. Salerno: Okay, just so that we're all on the same page and understand what your request is. Do any board members have any questions? Is there anybody in attendance this evening that wants to comment on this petition?

Again, you're looking for some relief from the side yard setback for what, for one corner that you said is about 2 ft.?

Mr. Meader: Well, better than 2. It's only 1.6 ft.

Mr. Salerno: Seeing no further comment, we'll take the matter under advisement, vote at the end of the meeting and notify you of our decision.

#### Decision

On April 29, 2003 the Zoning Board of Appeals unanimously voted to grant the appeal of Paul and Sharon Laramée, 57 Hillside Drive, Shrewsbury, MA, for a variance to the Town of Shrewsbury Zoning Bylaw, Section VII, Table II, Minimum Side Yard Requirement, Residence B-1 District, to allow the construction of an addition 8 ft. from the side lot line of property located at 57 Hillside Drive.

The board reviewed the appellants' proposal to construct an 18 ft. by 32 ft. addition to the rear of their home and found that, due to the unique shape of their property, the literal application of the minimum side yard setback requirement would severely encumber their ability to expand their home. The board noted that there is a very small area of the addition, less than 5 sq. ft., that would extend into the required side yard and felt that such a limited encroachment would neither significantly depart from the intent of the Zoning Bylaw nor adversely affect the welfare of either the general public or area residents. It was, therefore, unanimously voted to grant the appeal as presented to the board.

#### Vote

Mr. Salerno	Yes
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Mr. George	Yes
Mr. Gordon	Yes
Mr. Rosen	Yes
Mr. Wright	Yes

PUBLIC HEARING: Craig A. Hokanson, 196 Main Street, Shrewsbury, MA.

PURPOSE: To hear the appeal of Craig A. Hokanson, 196 Main Street, Shrewsbury, MA, for a variance to the Town of Shrewsbury Zoning Bylaw, Section VII, Table II, Minimum Side Yard Requirement, Rural B District, and a special permit as required by Section IV, Subsection B, to allow the construction of an addition 15 ft. and 20 ft. from the side lot lines and maintaining the existing front yard setback of property located at 196 Main Street. The subject premises is described on the Shrewsbury Assessor's Tax Plate 20 as Plot 2-5.

PRESENT: Anthony M. Salerno, Chairman, Paul M. George, Melvin P. Gordon, Ronald I Rosen, Jonathan B. Wright and Ronald S. Alarie, Building Inspector.

Mr. Salerno opened the hearing by reading the advertisement as it appeared in the Worcester Telegram on April 14, 2003 and April 21, 2003.

Mr. Salerno: Please identify yourself for the audio record and make your presentation.

Mr. Hokanson: My name is Craig Hokanson. I would just like to give you a recap of the whole property and what's been going on there. My wife and I purchased the property at 196 Main Street about 4 years ago. It was first operated as a medical building. It was a duplex. We moved in and I operate a chiropractic practice on one half and I live in the other half. Last year we came up for our special permit. I did renew that permit. It was in complete compliance and there were no complaints whatsoever in my 3-year term.

The addition will be for the living quarters only. The practice will continue to remain the same occupying the same square footage. Efforts have been made to create proper aesthetics as well as good exterior looks and to help increase the value as well. I have 2 sets of plans that I can show you. This is the setback here. The reason for the addition is that, as the family grows and gets bigger, its living quarters are getting really tight. I'm trying to help get a little bit more room. The addition will include, as you can see, the 2 bedrooms and a bath above the garage.

Mr. Salerno: Who else has operated out of that location?

Mr. Hokanson: It's a chiropractic practice.

Mr. Salerno: Was there another business in there at another time?

Mr. Hokanson: No, you asked me that last time.

Mr. Salerno: I don't know why. I'm sorry I'm stuck on that. I thought I saw other signs up there.

Mr. Hokanson: No, I have signs up there right now with my phone number, what we do and just the services that we offer. That sign is basically there for the patients.

Mr. Wright: You currently have 2 driveways?

Mr. Hokanson: Yes.

Mr. Wright: The 2 would remain?

Mr. Hokanson: Yes, the 2 driveways would remain because one is for the office and the other side is for the residential.

Mr. Wright: So, there wouldn't be a third driveway then?

Mr. Hokanson: No.

Mr. Gordon: The driveway that exists on the east side of the house where the garage is going, that was a garage before?

Mr. Hokanson: Yes.

Mr. Gordon: So, the driveway would actually be shorter as the house would be taking up part of the driveway?

Mr. Hokanson: Yes and no. The garage is actually 1 ft. behind the house. We're actually recessing it 1 ft. to make it look a little bit better and, actually, add 1 ft. of driveway. So, where the cars are parked now, that will be where the garage is. Realistically, there is no change to the driveway because the cars will still be taking up the same footprint.

Mr. Gordon: Yes, but you won't have a circular driveway around the back of the house?

Mr. Hokanson: No.

Mr. Salerno: It would be easier to get in and out on Main Street if you did.

Mr. Hokanson: That's right.

Mr. Gordon: It's an unusually shaped lot.

Mr. George: It is.

Mr. Gordon: What does it have, Ron, 2 side yards?

Mr. Alarie: It actually has 3 side yards.

Mr. Gordon: Three side yards. Do you think this will be your last request of us for changes for the property's structures?

Mr. Hokanson: I hope so.

Mr. Gordon: I'm one who hates changes by variance. If this is your last one, I have some feelings about it. But, if this isn't the last one, I probably will have other feelings.

Mr. Hokanson: Okay.

Mr. Gordon: I guess your hardship is the shape of the land. Is your special permit up for approval again?

Mr. Hokanson: It came up last year.

Mr. Gordon: It came up last year. How long was the approval for this time?

Mr. Hokanson: It was for 5 years.

Mr. Salerno: Which one is the rear lot line, Ron?

Mr. Alarie: The rear yard is the one that's furthest and opposite Main Street.

Mr. Salerno: You have a line that's 125 ft.

Mr. Alarie: That is still technically a side yard. The 38.80 ft. line is the rear yard.

Mr. Rosen: Which is the rear?

Mr. Alarie: It's the 38.80 ft. It is the one that's opposite and furthest removed from Main Street.

Mr. Rosen: He needs 30 ft., right?

Mr. Alarie: Correct. These homes, there are duplexes further to the west, were all built prior to the current zoning. They were done under the old bylaw that, with the 100 ft. of frontage, 12,000 sq. ft. lots, you could have either a single family or a 2-family home throughout town. When this was rezoned in 1967, it fell into that Rural B category which was single family only which really increased the lot sizes and the setbacks significantly.

Mr. George: At the rear of the addition, how far off of the side yard setback is it?

Mr. Hokanson: I think it's 26 ft.

Mr. George: It's 26 ft.?

Mr. Hokanson: I think it's 26 ft.

Mr. Salerno: So, your business is run on one side and you'll be occupying the other side?

Mr. Hokanson: Correct.

Mr. Salerno: And, your family lives there?

Mr. Hokanson: Yes.

Mr. Salerno: One of my concerns is that, if we grant this part and parcel and in a year you decide to move, now you've got a sprinkling of uses there, business and income property, side by side.

Mr. Alarie: I'm not sure if the board set a time table. I know on the initial one they issued the special permit with a sunset date. I'm not sure if, on the second time around, there was any expiration on that permit. I think it's limited specifically to the type of practice that Mr. Hokanson conducts.

Mr. Salerno: Do you know if it expires?

Mr. Hokanson: Yes, because, even when I purchased it from the previous owner who had a business, I had to go for that special permit again.

Mr. Alarie: Correct.

Mr. Salerno: To run your business?

Mr. Hokanson: Yes.

Mr. Salerno: That was only permitted per business? Is there any history in the file, Ron, on the prior permit?



Mr. Alarie: I have the folder back in the office, if you would like me to get it?

Mr. Salerno: Yes. I would like to see the information outlining the special permit that's in place now.

Mr. Gordon: Well, whatever goes in there, we would have to give them a special permit to run a business.

Mr. Salerno: But, then it still reverts back to an expanded duplex on one side and the other one would not be. So, in reality, it wouldn't matter how long a special permit was in place with this operation. Do you recall, Dr. Hokanson, how long the special permit is that is currently in place there? Do you recall if there are any provisions for time?

Mr. Hokanson: It's for 5 years.

Mr. Salerno: It's just for 5 years?

Mr. Hokanson: From last year, so there are 4 years left. I'm sure Mr. Alarie is bringing the representation back here.

Mr. Salerno: Do any board members have any questions? The proponent told us, Ron, that that was a 5 year special permit issued last year.

Mr. Alarie: There are 2 appeal folders. The first one, I think, was issued for 3 years. And, then in 2002, he came back.

Mr. Gordon: But still, if he sold the business, another person would have to come and get a special permit.

Mr. Alarie: Not if it's conducted exactly as what was permitted.

Mr. Gordon: So, if it was a chiropractic business, it would be done?

Mr. Alarie: Right, that would run with the land.

Mr. Gordon: So, it would transfer?

Mr. Alarie: Right.

Mr. Salerno: How can they transfer that back?

Mr. Alarie: That special permit and the rights authorized by it run with the property unless the board limited it to Mr. Hokanson.

Mr. Salerno: I thought you said that we did limit it to him, initially or did we limit it to chiropractic?

Mr. Alarie: It was limited to the chiropractic business, the type of business to be performed.

Mr. George: So, if someone practiced that same thing, would they have to occupy the other half of the house?

Mr. Alarie: They would have to conduct a business exactly in accordance with the presentations and the limits of the special permit.

Mr. George: But, would it have to be owner occupied?

Mr. Alarie: Not necessarily.

Mr. Salerno: This decision dated April 2002 is the one that's currently active?

Mr. Alarie: Yes.

Mr. Salerno: It reads "it was therefore unanimously voted to extend the special permit for a period of 5 years."

Mr. Alarie: I stand corrected. I didn't think that there were any other conditions cited on there. The previous one limited the hours and I think it was a 3-year period.

Mr. Salerno: Right. So, it appears that it does have a 5-year life. Always ask the landowner.

Mr. Hokanson: I thought I was learning something new.

Mr. Gordon: You hoped.

Mr. Salerno: Does anybody else have a question? Is there anybody in attendance this evening that wants to comment on this petition? Seeing no further comment, we'll take the matter under advisement, vote at the end of the meeting and notify you of our decision.

#### Decision

On April 29, 2003, the Zoning Board of Appeals voted four in favor of and one opposed to the granting the appeal of Craig A. Hokanson, 196 Main Street, Shrewsbury, MA, for a variance to the Town of Shrewsbury Zoning Bylaw, Section VII, Table II, Minimum Side Yard Requirement, Rural B District, and a special permit as required by Section IV, Subsection B, to allow the construction

of an addition 15 ft. and 20 ft. from the side lot lines and maintaining the existing front yard setback of property located at 196 Main Street.

Upon review of this appeal, the majority of the board found that, due to the unique configuration of the subject premises and its nonconforming features, the literal application of the minimum terms of the Zoning Bylaw would virtually preclude any expansion of Mr. Hokanson's home. They noted that, originally, the property was developed as a two-family dwelling and occupied for such purposes until 1992 when a special permit was issued to allow its conversion to a medical office providing pediatric services. In 1999, the appellant purchased the premises and has conducted his chiropractic business within part of the building in accordance with special permits issued by this board. He and his family also reside here and he proposes to construct an addition to the easterly side of the structure that would contain a two-car garage at grade level and 2 bedrooms and a bathroom within its second story.

It was their opinion that, in providing relief from the minimum side yard requirement and permitting the lateral and vertical extension of the existing front yard setback, the construction and use of the proposed addition would not significantly depart from the intent of the bylaw, create any condition that would detrimentally affect the welfare of either the general public or area residents or materially alter the nonconforming character of this property. They, therefore, voted to grant the appeal as presented to the board.

One member of the board was of the opinion that the granting of the relief requested would significantly derogate from both the intent and the purpose of the bylaw and that the expansion of the existing structure, which is used for both business and residential purposes, would overburden this property. He, therefore, voted to deny the appeal.

#### Vote

Mr. Salerno	No
Mr. George	Yes
Mr. Gordon	Yes
Mr. Rosen	Yes
Mr. Wright	Yes

PUBLIC HEARING: Philip C. Harter, 939 Boston Tpke., Shrewsbury, MA.

PURPOSE: To hear the appeal of Philip C. Harter, 939 Boston Tpke., Shrewsbury, MA, for variances to the Town of Shrewsbury Zoning Bylaw to: Section VII, Table II, Minimum Front Yard Requirement, Commercial Business District; to Section VII, Subsection E-4a; and to Section VII, Subsection D-2a(5), to allow the construction of an

addition upon property located at 939 Boston Tpke. 10 ft. from the northerly sideline of Route 9, to allow the placement of a sign adjacent to the northerly sideline of Route 9 and to allow the development of off-street parking thereon with a grade of 9 %, respectively. The subject premises is described on the Shrewsbury Assessor's Tax Plate 36 as Plots 53 and 15-1.

PRESENT: Anthony M. Salerno, Chairman, Paul M. George, Melvin P. Gordon, Ronald I Rosen, Jonathan B. Wright and Ronald S. Alarie, Building Inspector.

Mr. Salerno opened the hearing by reading the advertisement as it appeared in the Worcester Telegram on April 14, 2003 and April 21, 2003.

Mr. Salerno: Counsel, would you identify yourself for the record and your client and make your presentation please.

Atty. Ricker: Thank you, Mr. Chairman. Members of the board, my name is Richard Ricker. I'm an attorney representing Performance Cycles. With me tonight is Philip Harter. He's the president and general manager and operator of Performance Cycles. Mr. Harter has been operating Performance Cycles in Shrewsbury in excess of 30 years. He has been at this particular location on Route 9 since 1983. At that time, this board granted him a special permit for the sales and service of motorcycles and recreational vehicles, which he's been doing since that day. In addition, just historically, Mr. Harter was before you with me in 1994 when he requested a variance for some changes to the structure at the site. This original structure was a machine shop. It's built on the northerly side of Route 9. As you are going up the incline from Walnut Street, it's about 400 ft. westerly of Walnut Street. It is on the incline going up Route 9, which as we know, is a heavily traveled and fairly fast road. These are the existing conditions as the property sits now.

Right here, there is a substantial amount of ledge area. Route 9 at this particular site is basically up on a hill. The site drops right off when you get off of Route 9. As I said, right now there's an existing concrete area right here. I think he has some storage area right there. This proposal would be to add a 4,800 sq. ft. addition right here, right where that cement deck is. The addition would be proposed to run right parallel along Route 9. However, because of the way Route 9 runs, it actually moves 1.5 ft. closer than the existing structure. Route 9 has a slight curve there, although you would never know it.

This is a 4,800 ft. proposed expansion, as I suggested, and has 2,400 sq. ft. on each floor. The lower area being for service and the upper level would be for retail sales and even a showroom. As I suggested, the property is impacted by the topography of the site. It's an interestingly shaped lot and this is all ledge.

The area where he would be looking to extend the parking would be here. This proposal, I would suggest to the board, would greatly improve the site overall because it improves the maneuverability on the site and the overall orderliness. These parking spaces here are the problematic ones. You may note that in the 1994 decision, I believe, there was a condition of your board that the parking areas not have a grade in excess of 10 %. What he's proposing here is a grade of 9 %. They did have to blast here in order to put these parking spaces in. This is all ledge. The reason that it would be 9 % instead of trying to be more level is because, if you go any less than that, you have an extreme drop-off because of the topography. The original building is here and it's his desire to run this building parallel to it right here.

We would be asking that the sign be located right here, in front of the building. It would be lowered from its present configuration down to the front of the building. It would be more visible for traffic coming up the highway. Basically, he has experienced problems where people, believe it or not, miss his site. It is a fairly isolated site. It has woods on both sides except for the ledge on the westerly side. But, it is pretty well enveloped in by the trees on both sides. Basically, that's hardships. I would suggest that this is incidental to only this site in this neighborhood. There is no other property like it in that particular area. These characteristics are unique to his particular commercial site.

With respect to the bylaw, we would suggest, respectfully, that this is an improvement to the site, a vast improvement to the site. It has more benefit and virtually no detriment to the neighborhood. The benefits being tax benefits to the town, as well as orderliness to the site, improvement of the site and just an overall better looking situation as well. With that, if you have any questions, we would certainly try to answer them.

Mr. Salerno: Mr. Ricker, the sign, as you're showing it, is right on the state highway line?

Atty. Ricker: That's correct.

Mr. Salerno: I just had a question. If that sign were moved to the east at the northeast corner of the building, would it get it further from the road?

Mr. Harter: Do you mean the southeast corner? You're talking about right here?

Mr. Salerno: Yes, if you moved it around the corner, would you still have the visibility on the westbound lanes?

Mr. Harter: It would be right behind those trees and those trees aren't mine. The problem is that there is a wide path to Route 9 and this is all green area basically in here. Trees do envelope the facility.

Mr. Salerno: It's nice to have the trees there. I wouldn't want to see you remove the trees for a sign.

Mr. Harter: Right.

Mr. Rosen: What's the sign going to look like

Mr. Harter: It's the same sign that's there now. It has several different marques on it. The biggest one of is about 12 ft. long. It's exactly 12 ft. long. I believe it's 12 ft. x 3 ft. What I would like to do, actually, is lower it. It will do a couple of things. It'll bring it down to where it's more visible. One of the problems we have is that, for people coming up Route 9 at the hill on the curve, the sign isn't really in their line of sight. It's not that I'm trying to attract more business because of this, but they miss the building. They hit the brakes in a hurry and cut into the driveway. It's pretty dangerous. So, if they had a little bit more of a warning and if they could see the sign a little bit more ahead of time, they could slow down. So, I think dropping it down will bring it more into your line of sight as you're coming up the hill there. The other thing is that we want to increase the lighting there and, being that it's lit, it would serve to light the front of the building.

Mr. Salerno: What are you, westbound? What about your eastbound traffic if you drop it down? Aren't you going to loose the sightline there?

Mr. Harter: Well, you may loose a little there but people have to go down to Route 20 or down to Otis Street to turn around. Either way, they have to come back.

Mr. Salerno: Signage is a big concern of ours.

Mr. Harter: Well, yes. The problem right now is that it's sitting right where I want to put the addition.

Mr. Gordon: I asked you at the Planning Board hearing if you would speak with the building inspector and the fire chief about sprinklers in the older section of the building. You're approaching 12,000 ft.

Mr. Harter: Yes.

Mr. Gordon: Has that been done?

Mr. Harter: I'm actually getting a quote from a couple of different companies.

Atty. Ricker: We haven't talked about that yet. We want see what the cost is.

Mr. Harter: But it's something that I want. I would like to be able to do it. It does a couple of things. To be in code now, you can't go over, I think it's 7 or 8,000 sq.

ft. or something like that, without a firewall. I would like to be able to open up the inside of the building anyway. I have the firewall there. I would like to do it if I can.

Mr. Gordon: Would you be willing to have, as part of this decision, the site plan review decision made a part of this decision which spoke to the lighting that was necessary?

Atty. Ricker: That's fine

Mr. Harter: Yes.

Mr. Gordon: It wouldn't be reviewed anymore, it would be part of the variance.

Atty. Ricker: Right.

Mr. Harter: Right.

Atty. Ricker: We plan to abide by that anyway. So, that's no problem.

Mr. Gordon: So, we'll make that a part of this decision. I'm done.

Atty. Ricker: There was one issue I would address, if I could, Mr. Chairman.

Mr. Gordon: It's written, but we haven't voted on it.

Mr. Salerno: How would you incorporate that in this decision?

Mr. Gordon: Well, being the decision of the Planning Board incorporated as part of the decision.

Mr. Salerno: Voting to allow this contingent upon being approved by another board and that being a part thereof of this decision?

Mr. Gordon: That's what I'm asking.

Mr. Gordon: Basically, it talks to lighting and emergency lighting. I don't think it talks to the parking.

Atty. Ricker: No, the Planning Board wanted, just basically, to put more light on the building and to light the premises a little bit better than it has been.

Mr. Gordon: What happens if somebody comes scooting out of Walnut Street while a car's coming up? That car might be in the right-hand lane wanting to go into his place but they will have to go over to the left lane and, by the time they

realize that they want to go into his place, they've gone by it because it's so dark there. So, we want it lit better.

Atty. Ricker: Yes, we are going to do that even though you can see us from light that comes from the place across Route 9.

Mr. Salerno: Thanks.

Mr. Alarie: But, Mr. Gordon, those conditions that the Planning Board may set would be binding on them in any instance upon the issuance of a building permit.

Mr. Gordon: My concern is that's a review.

Mr. Alarie: No, you're issuing site plan approval. That's binding on the developer.

Atty. Ricker: We expect that we would have to abide by that anyway, just as long as you don't throw anything extra in.

Mr. George: Does the existing building have customer service on the first level?

Atty. Ricker: Yes.

Mr. George: Underneath in the back?

Atty. Ricker: Yes.

Mr. George: So, the addition is going to be set the same way?

Atty. Ricker: Yes.

Mr. Wright: I think this was before us last month at the Planning Board. It's definitely an improvement to the operation. It takes into concerns the safety of the people that are visiting and the sight distances. It is a very tough site and they seem to have worked within the confines of the site very well.

Mr. Salerno: It's a compliment to you and you've done a very nice job in maintaining the property.

Mr. Harter: I try to keep it clean. Nobody wants a motorcycle shop in the back yard if it's going to be dirty.

Mr. George: That is on septic, isn't it?

Mr. Harter: Yes.



Atty. Ricker: As part of this process, we have been dealing with the board of health relative to the septic system and we presented the site plan to the Planning Board.

Mr. Gordon: We had neighbors come. Surprisingly, the neighbors did not find the noise offensive. I guess the mountain brings it up and away.

Atty. Ricker: It really is isolated.

Mr. Salerno: Is there anybody in attendance this evening that wants to comment on this petition? Seeing no further comment, we'll take the matter under advisement, vote at the end of the meeting and notify you of our decision.

### Decision

On April 29, 2003 the Zoning Board of Appeals unanimously voted to grant the appeal of Philip C. Harter, 939 Boston Tpke., Shrewsbury, MA, for variances to the Town of Shrewsbury Zoning Bylaw to: Section VII, Table II, Minimum Front Yard Requirement, Commercial Business District; to Section VII, Subsection E-4a; and to Section VII, Subsection D-2a(5), to allow the construction of an addition upon property located at 939 Boston Tpke. 10 ft. from the northerly sideline of Route 9, to allow the placement of a sign adjacent to the northerly sideline of Route 9 and to allow the development of off-street parking thereon with a grade of 9 %, respectively.

Mr. Harter has conducted his business, which involves the sale and service of motorcycles, recreational vehicles and related equipment and parts, from the subject premises since 1983. He was granted relief in 1984 that permitted him to expand the westerly side of his building. As noted in that decision, the site has significant differences in its topography as well as a substantial outcropping of ledge along its westerly side. Do to the extent and expense of lowering the ledge to accommodate the proposed addition, that plan was abandoned. Mr. Harter now proposes to construct an addition to the easterly side of his building, which is nonconforming with respect to its front yard setback, that would project slightly closer to the road due to curvature in the layout of Route 9 along his frontage. Additional off-street parking would also be provided to the westerly side of the site and the existing pylon sign, which was previously located by variance, would be relocated to the front of the building.

It was the board's opinion that, without relief from the literal application of the applicable requirements of the Zoning Bylaw, the aforementioned conditions substantially impede and unduly restrict the appellant's ability to further develop his property. It was their opinion that the expansion and site alterations now proposed by Mr. Harter would not seriously deviate from either the intent or purpose of the bylaw and that they would not create any condition which would adversely impact the welfare of the general public. It was, therefore,

unanimously voted to grant the appeal in accordance with the appellant's presentation to the board.

Vote

Mr. Salerno	Yes
Mr. George	Yes
Mr. Gordon	Yes
Mr. Rosen	Yes
Mr. Wright	Yes

PUBLIC HEARING: Enterprise Rent-A-Car Company of Boston, Inc., 800 Hartford Tpke., Shrewsbury, MA.

PURPOSE: To hear the appeal of Enterprise Rent-A-Car Company of Boston, Inc., 800 Hartford Tpke., Shrewsbury, MA, for a special permit as required by the Town of Shrewsbury Zoning Bylaw, Section VI, Table I, to allow the sale and rental of motor vehicles upon property located at 800 Hartford Tpke. The subject premises is described on the Shrewsbury Assessor's Tax Plate 43 as Plots 1-5, 1-6, 1-7 and 1-8.

PRESENT: Anthony M. Salerno, Chairman, Paul M. George, Melvin P. Gordon, Ronald I. Rosen, Jonathan B. Wright and Ronald S. Alarie, Building Inspector.

Mr. Salerno opened the hearing by reading the advertisement as it appeared in the Worcester Telegram on April 14, 2003 and April 21, 2003.

Mr. Salerno: Counsel, identify yourself for the record, and your client.

Atty. Ricker: Thank you, Mr. Chairman, and members of the board. Again, my name is Atty. Ricker and I am the attorney representing Enterprise Rent-A-Car and Enterprise Car Sales, the applicant before you tonight. This proposal has been looked at previously by the Board of Selectmen. We chose, in this particular case, to go to the Board of Selectmen to deal with the issue of the Class II License first. Then we did also go before the Planning Board for review of the plan. Now we are before you asking for the permit to sell motor vehicles as the application refers. This proposal is for property located on Route 20 or the Hartford Turnpike. This is the property known as the NationsRent property. It was formerly Logan Equipment and is now NationsRent. This portion of the property outlined in yellow is the portion that we're talking about for Enterprise Rent-A-Car and Car Sales. There would be a rental facility as well as a car sales facility here.

Enterprise Rent-A-Car is the largest rental agency or company in the world. As part of that, they purchase over a half a million new cars a year. Therefore, obviously, they have a need to sell some of their vehicles. This facility would sell vehicles as well as rent. It is intended for both purposes. The vehicles would all be within a fenced area here. The parking for the office area would be about 3,500 square feet on the first floor of the older building of Logan Equipment which they would rehab as part of the NationsRent rehab project.

Basically, as I said, this is for the sales of vehicles incidental to their rental facility or rental business. They sell their own cars. There are restrictions that have been placed on them with the licensing by the Board of Selectmen. The Board of Selectmen put a 100 vehicle total limit on the site as well as a limit that no more than 50 of the vehicles may be for sale at any given time. One excellent benefit, if I could suggest to the board, is that Enterprise is going to register 30 new vehicles here.

Ms. Roy: It will be 50.

Atty. Ricker: Fifty new vehicles? That's right at about an average of \$30,000.

Mr. Rosen: For 2 years?

Atty. Ricker: The first 2 years of their rental year. Thereafter, they will keep at least 30 vehicles, depending on business, registered in Shrewsbury for the duration of their tenure. Now, without being a mathematician, I would suggest to the Board that, without any drain on the resources of the Town of Shrewsbury whatsoever, what this amounts to is in excess of \$30,000 a year in excess tax revenue from the excise taxes from these new vehicles and from the 1 to 3 year old vehicles which is all they do for their rental fleet.

So, this property, which the Board is very familiar with it, has a landscaped area here. It's a well situated property for this use. It's well set up for it. As you are aware, there has been a rental facility there for many years and for sales. This is a compliment to that site. I would suggest it's going to move the large equipment that you see on the site now in this area back to the rear of the premises. The area in green is what is going to remain solely NationsRent. The area in yellow is solely for Enterprise. I would suggest that there is absolutely no detriment to the neighborhood. It's not derogatory in any way, shape or manner to the bylaw. In fact, it fits in nicely with the Master Plan that it's being commercial zoned and I would ask you to allow this petition.

Mr. Salerno: Thank you. Are there any questions from the board?

Mr. George: Will there be any service done to these vehicles on site?

Atty. Ricker: No, the only service would be like waxing, buffing, cleaning and things like that.

Mr. George: Any oils or anything?

Atty. Ricker: Oils and things like that, they send out for. They do it all locally. They seek out local people within the community to do those jobs. We anticipate they would be hiring seven employees for the sales and three or four employees for the rentals at this facility. I should have introduced Pam Roy. She's with Enterprise and also here is Erik Gaspar who is in charge of the sales.

Mr. Wright: What will be your hours of operation, Richard?

Ms. Roy: They will be 8:00 to 7:00, Monday through Thursday, 8:00 to 6:00 on Fridays and 9:00 to 4:00 on Saturdays.

Mr. Wright: Closed on Sundays?

Ms. Roy: Yes.

Mr. Gordon: How is the party wall being dealt with?

Atty. Ricker: There are walls there.

Mr. Gordon: Are you open to the NationsRent space?

Atty. Ricker: There are walls there now and there would be locked doors. There's a locked door in this area here. There is also a locked gate right here.

Mr. Gordon: Is that the front of the diesel tank?

Atty. Ricker: The diesel tank is right here.

Mr. Gordon: Okay. So the diesel tank will be part of which site?

Atty. Ricker: Solely NationsRent.

Mr. Gordon: Okay. Lighting will remain the same?

Atty. Ricker: Lighting and everything else remains exactly the same, except as you may be aware, the NationsRent sign is presently here and we will be asking for permission to move that to here. The Enterprise people would take this sign here.

Mr. Salerno: Is there anybody in attendance this evening that wants to comment on this petition? Would you just please identify yourself for the record and direct your comments to the board, please.

Ms. Erickson: My name is Patricia Erickson and I come in response to a letter that you sent out as an abutter. I'm the trustee for the Shrewsbury Commons Condominium Association. We have 102 units. Our driveway is directly across from his driveway. So, with all this extra traffic, don't you think it would be wise to put in a set of lights?

Mr. Salerno: Are you talking about a traffic control system?

Ms. Erickson: Yes, because from what I understand, it's a state highway, Route 20, and someone took down the sign.

Mr. Salerno: It would be controlled by Mass. Highway.

Ms. Erickson: Somebody took down the "don't take a left-hand turn" sign. There was an accident about five years ago. Someone was leaving the Commons and there was a tragic accident. So, we're always concerned with that exit. I was just wondering if, with all this additional traffic, because I'm sure he's going to have a wonderful business going and with all these extra cars taking lefts and rights onto 20, it might be an advantage for his business to put up another sign.

Mr. Salerno: To restrict left-hand turns?

Ms. Erickson: Or to do something concerning the traffic.

Mr. Gordon: Are you aware that there will be a traffic light at the Christmas Tree Shops which will interrupt traffic?

Ms. Erickson: No, he's directly across from us, I think.

Atty. Ricker: Not quite.

Mr. Gordon: Not quite. I don't think it would reach the threshold of Mass. Highway putting another light there.

Ms. Erickson: They're not right across the street from our exit, our rear exit?

Atty. Ricker: No.

Mr. Salerno: Is there any restriction on that?

Mr. George: That could only be done by Mass. Highway.

Ms. Erickson: The signs are right there when I leave. I see the sign. Is it 800?

Atty. Ricker: This is the particular entrance here, I suggest, if that's correct.

Mr. Salerno: Counsel, you're on the south side of 20, correct?

Atty. Ricker: Yes.

Mr. Salerno: And you're going to have how many curb cuts or openings to this?

Atty. Ricker: In actuality, we originally had three. We've reduced it to two.

Mr. Salerno: And where are they on that plan?

Atty. Ricker: One right here and one right here.

Mr. Salerno: So, you will share one with the rental?

Atty. Ricker: This one would be the one that would be primarily used by Enterprise.

Mr. Salerno: And then the next one up is shared?

Atty. Ricker: Primarily used by NationsRent.

Mr. Salerno: So, are they going to grant an easement to the tenant or something?

Atty. Ricker: They have cross-easements on the property.

Ms. Erickson: NationsRent is across from us.

Mr. Salerno: Just one second, ma'am. Ma'am we're going to give you an opportunity. I didn't mean to cut you out.

Ms. Erickson: Okay.

Mr. Salerno: You've got cross-easements going for both of those?

Atty. Ricker: Yes.

Mr. Salerno: And it's the same land line?

Atty. Ricker: No, well, there's a joiner there of interest.

Mr. Salerno: Okay. And just some of the preliminary questions were, if left turns were restricted out of there, then that means traffic exiting would not cross Route 20 and make a left-hand turn, to be forced to turn right coming out of the property?

Atty. Ricker: Yes right, that is true.

Mr. Salerno: Would that substantially impact what it is your client's trying to accomplish?

Atty. Ricker: I think it would substantially impact both them and NationsRent who would probably object more than us. You know, we addressed a lot of this in front of the Planning Board.

Mr. Salerno: The questions is, if somebody coming out is making a left and actually covering both sides of the highway, they have to cross two or three lanes of traffic.

Atty. Ricker: There is good visibility there.

Mr. Salerno: They'll turn across the eastbound lane and then enter into the westbound lane. I think that's one of her concerns.

Ms. Erickson: Yes. Just last week something happened. Oftentimes people use our private street to cut through and they're not familiar with it. You'll find that there are two lanes and there's a yellow lane in the middle. You'll find somebody on the left side making a left-hand turn. So, it was good to have that sign that said "no left-hand turns" because they wouldn't come in. There are big trucks that come up Route 20 and they have to make the hill for the light and they try to beat the light. There is a lot of traffic, so that would be our concern.

Mr. Gordon: It's going west?

Ms. Erickson: Yes.

Mr. Gordon: On your side?

Ms. Erickson: Yes, we're on the west. We're going west.

Mr. Gordon: Where was the "no left turn" sign?

Ms. Erickson: Right across from our street. It's gone now.

Mr. Gordon: It dealt with you or it dealt with the highway?

Ms. Erickson: Us, it was restricting us.

Mr. Gordon: Restricting you to go left?

Ms. Erickson: Yes. Which, was good.

Mr. Gordon: From the Commons?

Ms. Erickson: But you have to cross traffic and there's a blind spot there.

Mr. Gordon: But that's a private drive.

Ms. Erickson: Yes.

Mr. Gordon: The Condominium Trust, or whoever else is involved there, can put up a sign.

Ms. Erickson: Yes.

Mr. Gordon: Wouldn't they be responsible for replacing that?

Ms. Erickson: Well, it's not that they would be responsible. It's the fact that, because I'm a trustee, I'm concerned with my people. And this is our concern, that exit.

Mr. Salerno: If it's posted by the Commons, it may not be a DPW sign that's even enforceable.

Mr. Gordon: No, I don't think it is.

Ms. Erickson: Sir, I don't speak for owners, I speak for my neighbors.

Mr. Gordon: But, what we're saying is, if the sign was on your property, on private property, that would be for your benefit and you could do that.

Ms. Erickson: It was across the street on state property.

Mr. Gordon: It was on the state property?

Ms. Erickson: And it was moved.

Mr. Gordon: Was it a state sign?

Ms. Erickson: I have no idea.

Mr. Salerno: It was across the street. It was across the street facing them.



Ms. Erickson: But you don't want to take a left because, if people are coming out of his business, it's going to be crazy.

Mr. Salerno: Well, people coming out of the Commons can make a left turn.

Ms. Erickson: That's why I suggested maybe a sign could be put up.

Mr. Gordon: The Commons property has poorer sight distance just because the center of the driveway curves at the bottom. I used to live there and you take your life in your hands when you do that. Well, you don't take your life.

Ms. Erickson : Well, its very dangerous.

Mr. Gordon: It's difficult to get out of the driveway from that side. But on the other side of the road, the sight distance is well in excess of 200 ft. on each side. In fact, I believe that, when we did that the first time, we made you put in, with Mass. Highway's approval, acceleration and deceleration lanes on your side.

Atty. Ricker: Right, a deceleration lane.

Mr. Gordon: A deceleration lane?

Atty. Ricker: Right. And we did install that and Mass. Highway has approved the layout as it is.

Ms. Erickson: See, your renters would not be familiar with the area. So, they would be handicapped, whereas, at least the people that live in my neighborhood realize the traffic.

Mr. Gordon: Is there lighting at the bottom of your driveway?

Ms. Erickson: Yes.

Mr. Gordon: So. there is an overhead light there and people can be seen?

Ms. Erickson: Yes.

Ms. Carey: No.

Mr. Gordon: Someone is saying "no." Somebody is saying "yes."

Ms. Carey: There isn't any lighting there.

Mr. Salerno: Ma'am, if you would just identify yourself so Linda can keep accurate Minutes. And please, join us with a comment.

Ms. Carey: Jean Marie Carey, 85 Commons Drive. I've lived here for approximately 28 years and I enjoyed living there very, very much until just recently. We've become part of the Auto Mile, which I thought was located on Route 1 and now it's on Route 9. Now, it also looks like it's going to start on Route 20. We live in a very difficult and very dangerous spot. We're driving in and out of the complex, no matter if it's Route 9 or Route 20. I don't know the type of business that Enterprise is trying to put in there. I've been to some of these hearings for Logan when they were looking to expand there and they have done a very nice job keeping that up. If this were a business that wasn't going to have heavy traffic, it might work. But, right now we have so many tractor trailer trucks coming down Route 20 that start at the top of the hill by the lights and come rolling down. If somebody takes a turn, and I've seen one of my neighbors go right out and they make a wrong turn, the poor truck driver slams on his brakes. One of these days, one of those trucks is going to go right into NationsRent and so forth, because there's just no place for them to go.

I'm only speaking out of safety. I don't want to be the vehicle that's abiding by the rules and winds up getting hit as a result of these tractor trailer trucks having to slam on their brakes. But, if the board would just keep in mind as they're adding things to that area of Route 20 and also Route 9 with large quantities of traffic, that you're closing in on us.

Mr. Salerno: Thank you, ma'am.

Mr. Gordon: My concern is that the problem may not be Enterprise's or NationsRent's. It might be the Commons problem for lighting and direction. So, I want to make sure we're not punishing one proponent for another party.

Ms. Erickson: No, I'm not.

Mr. Salerno: Ma'am, you just have to identify yourself again. That's fine. If you have a comment, just identify yourself for the audio record. That's all we're asking.

Ms. Erickson: I wouldn't be able to sleep at night.

Mr. Salerno: Just tell us your name.

Ms. Erickson: Patricia Erickson.

Mr. Salerno: Thank you, Ms. Erickson.

Ms. Erickson: And, I wouldn't be able to sleep if I, you know, didn't at least mention that the left-hand turn sign should be put back up. If that's all we got, that would be fine, because that would help you and it would help us.

Mr. Gordon: So, you'd like NationsRent to put a sign on their fence?

Ms. Erickson: No, whoever took the sign down, I'd like them to put it back up again. It said "no left-hand turn" right in front of our driveway.

Mr. Gordon: Mr. Ricker, maybe you can talk to your client about putting a sign up?

Ms. Erickson: That's all.

Atty. Ricker: I mean, I'll certainly talk to my client about that.

Ms. Erickson: I'd be very happy.

Atty. Ricker: I would caution you, however, that Mass. Highway may have something to say about that.

Mr. Salerno: I don't know the history of the sign, so I can't comment on it.

Atty. Ricker: Honestly, Mr. Chairman and members of the board, this is the first I've heard about this sign. So, we'll look into it.

Ms. Erickson: Well, somebody thought that maybe you took the sign, the people that own it.

Atty. Ricker: Honest, I didn't.

Ms. Erickson: Okay, I believe you.

Mr. George: Mr. Ricker, what are the projected amount of rentals you foresee out of this facility?

Atty. Ricker: Thirty to 50 cars.

Mr. George: A day?

Atty. Ricker: No. Oh, no.

Ms. Roy: Oh, no.

Atty. Ricker: No.

Mr. Gaspar: If you look at the actual traffic patters that come and go, our average rental is about ten days to two weeks. If you figure a fleet size of about 50 cars, we're probably only going to be turning over, from a rental standpoint, about five to six of those cars a day. So, you figure that, coming and going,

maybe that's a dozen cars in and out. If a customer brings back a car with another one, plus the customers that are there to purchase vehicles and our own employees, that's about what we would expect. So, you're not really looking at a high traffic business like a convenience store, a Dunkin Donuts or things of that nature. I've been in and out of that property probably a couple dozen times over the last few months and I've never had an issue making a right or a left out of there. I don't think it's going to be an issue for our customers.

Mr. Gordon: What's the shelf life of your sales? I mean, how fast do you turn over those 50 cars or whatever?

Atty. Ricker: Cars last no more than three years and, usually, it's not over two years.

Ms. Roy: Ninety days.

Mr. Gordon: Ninety days?

Ms. Roy: Yes.

Atty. Ricker: Ninety days.

Mr. Gordon: Okay.

Mr. Salerno: Seeing no further inquiry, we'll take it under advisement and notify you of our decision.

Atty. Ricker: Thank you very much.

The decision of the board is on the following page.

#### Decision

On April 29, 2003 the Zoning Board of Appeals unanimously voted to grant the appeal of Enterprise Rent-A-Car Company of Boston, Inc., 800 Hartford Tpke., Shrewsbury, MA, for a special permit as required by the Town of Shrewsbury Zoning Bylaw, Section VI, Table I, to allow the sale and rental of motor vehicles upon property located at 800 Hartford Tpke.

The board reviewed the appellant's proposal to utilize a portion of the subject premises for the sale and rental of motor vehicles and found such use to be in harmony with the intent of the Zoning Bylaw in permitting such activities within the Commercial Business District. They noted that this site, which was recently reconfigured to accommodate the operation of a NationsRent center, is primarily used for similar purposes. The board was of the opinion that the sale and rental of predominately newer model vehicles would compliment the property's existing

use, that the site could readily accommodate the display and sales/rental of vehicles and that such use would not create any condition which would adversely impact the welfare of the general public. It was, therefore, unanimously voted to grant the appeal subject to the following:

1. A maximum of 100 motor vehicles shall be maintained upon the subject premises which are offered for sale, rental or lease.
2. There shall be no repair or maintenance of motor vehicles, which are associated with the rights authorized by the issuance of this special permit, conducted upon the subject premises. This restriction shall not prevent the cleaning, washing or cosmetic preparation of said vehicles.
3. The sale and/or rental of motor vehicles shall only be conducted between the hours of 8:00 A.M. and 7:00 P.M., Monday through Thursday, between 8:00 A.M. and 6:00 P.M. on Fridays and between 9:00 A.M. and 4:00 P.M. on Saturdays. Said activities shall not be conducted on Sundays.

Vote

Mr. Salerno	Yes
Mr. George	Yes
Mr. Gordon	Yes
Mr. Rosen	Yes
Mr. Wright	Yes

PUBLIC HEARING: Rawan Realty/Serrato Signs, 196 Boston Tpke., Shrewsbury, MA.

PURPOSE: To hear the appeal of Rawan Realty/Serrato Signs, 15 Dewey Street, Worcester, MA, for a variance to the Town of Shrewsbury Zoning Bylaw, Section VII, Subsection E-2, and a special permit as required by Section IV, Subsection B, to allow the removal and replacement of existing signs situated upon property located at 196 Boston Tpke. and to allow individual signs in excess of 20 sq. ft. upon said property. The subject premises is described on the Shrewsbury Assessor's Tax Plate 32 as Plot 408.

PRESENT: Anthony M. Salerno, Chairman, Paul M. George, Melvin P. Gordon, Bridget M. Murphy, Ronald I. Rosen and Ronald S. Alarie, Building Inspector.

Mr. Salerno opened the hearing by reading the advertisement as it appeared in the Worcester Telegram on April 14, 2003 and April 21, 2003.

Mr. Salerno: Would the parties identify themselves for the audio record.

Mr. Serrato: My name is Andrew Serrato of Serrato Signs.

Mr. Wayne Rawan: My name is Wayne Rawan from Rawan Realty.

Mr. Douglas. Rawan: I'm Douglas of Rawan Realty.

Mr. Serrato: I was in here probably about 6 or 8 weeks ago. Mr. Gordon asked me a question about the main pylon sign which I told him we were going to address. We have it on the agenda tonight along with addressing a couple of other signs on the property.

I guess the best way to start is to start with the pylon sign. I have a picture you can see showing the existing pylon sign as well as the existing pylon showing a proposed pylon also. The existing property is allowed 1,000 sq. ft. of signs. What happens with the property though, is it gets limited to 20 sq. ft. per sign. There is also a setback requirement of 25 ft. for pylon signs. My customers wish to replace the existing pylon sign and bring it up-to-date not exceeding the square footage it's allowed for the property in general. They've made vast improvements to the property. As you can see, this is another step in what they're trying to do. They also want to do it with their wall signs as well as the pylon sign that's on the side of the building. The pylon on the side of the building does meet the setback that's required. The difference on that is the tenant panels. The overall sign itself, the square footage, would be over, but each tenant would be about 24 sq. ft. on the sign that is proposed. There is a chance that they would remove a divider bar to make one sign bigger. I don't know who they have for tenants in place. Once again, the overall square footage of all of the signs would remain under what's allowed for the property in general.

Mr. Wayne Rawan: The basic sign that's there is obviously an eyesore. What we're trying to do is beautify the signs as well as the entire property that we're improving. Basically, this sign's been there for a long time. We're not happy with it the way it has been. At this point, we're looking to, obviously, improve it for ourselves and the major tenants that we're looking to draw. We recently had Sprint that was before you about 4 weeks ago, whenever Andrew was here prior to this. At that particular point, the board wanted to look at the entire proposal of what we're trying to do so that you could look at it intelligently and get an idea of what we were trying to propose. Basically, just to reiterate, what we're trying to do is do is beautify the whole shopping center in its entirety with the landscaping and the money we've put into it. We've put a lot of money into the property. Ron's been to the property and the fire marshal's been to the property. We've changed the entire property from the lower level, which was a basement, to the third floor. We've improved the entire building. I think that the inspectors, as well as the fire marshal, are pleased with the improvements. We can't put words in their mouths, but we basically have a general contractor that is on the premises

all day long that works for us. He's worked with the inspectors to update the property and bring it to all code levels, even above and beyond. Some of the things that they've asked us to do as far as widening corridors and that sort of thing. We've tried to do that on behalf of the safety of children and just improve the entire site.

So, we're asking you consider letting us improve the entire shopping center with the signage and, you know, beautification of it. It is obviously an eyesore now and we're definitely trying to improve it.

Mr. George: This sign out in front that you're proposing, is that the same height as the one that's there right now?

Mr. Serrato: Yes.

Mr. George: It's the same thing?

Mr. Serrato: Yes.

Mr. George: And the one on the side?

Mr. Serrato: Yes.

Mr. Gordon: You're proposing that this will be an unlit sign?

Mr. Serrato: Correct.

Mr. Gordon: One sign as opposed to multiple signs?

Mr. Serrato: The box dimension will be one sign. There would be dividers that could be changed depending on what the tenant is. The one I show here is for 11 tenants.

Mr. Gordon: But, it would not be individual boxes as they are now?

Mr. Serrato: Correct.

Mr. Gordon: In other words, the Sprint sign would not be just an individual sign?

Mr. Serrato: That's correct.

Mr. Gordon: Okay, it would be tied into the others so that it could be used, as you said, depending on how much they pay.

Mr. Serrato: Correct. It's showing, right now, 11 tenants. Something might happen 2 years down the road and they would only have 7. They want to be

able to let one tenant take, maybe, 2 of those spots so that their sign face would be larger, but the shape of the box wouldn't change. The square footage of the boxes are the same.

Mr. Rosen: The bylaw, what does that cover on the 20 sq. ft., the entire sign or each individual?

Mr. Alarie: To be under the 20 sq. ft., they would have to all be individual signs. As Mr. Serrato describes it here, that would all be considered one sign.

Mr. Rosen: Okay.

Mr. Gordon: Would the amount of frontage that they have apply?

Mr. Alarie: Oh, yes, but they have a tremendous amount of frontage on Route 9, Svenson Road and Edgewater Ave. All of that gets included into their sign calculation. There is a significant amount of sign space available.

Mr. Gordon: They would not exceed their sign allowance?

Mr. Alarie: They have not asked for relief from that.

Mr. George: Would all of these signs be lit or are they just marquee type?

Mr. Serrato: It would be internally illuminated.

Mr. Gordon: Not like now?

Mr. Wayne Rawan: We're proposing a beautiful sign. We knew we were going to make changes to what is up there. So, with the phases that we were going through, that was the last phase.

Mr. Gordon: You've already heard my arguments, so I'm not going to reiterate.

Mr. Wayne Rawan: I'm sorry?

Mr. Gordon: He's already heard my concerns about the sign, but you're addressing them.

Mr. Wayne Rawan: Right.

Mr. Gordon: I think that, while you're doing this, it would be wonderful if you would put a 5 ft. grass area in front from drive to drive to tie everything in and tie it together with what we're trying to do on Route 9. You've got a sidewalk, have a green area, have a sign and have your store. I think that would be a wonderful



thing to do. Would you be willing to, as a part of the variance, put a green area in?

Mr. Wayne Rawan: We had planned on that anyway. So, in other words, we're planning on putting that in the front, I don't know exactly the square footage because we haven't brought a landscaper in, but this is part of the improvements of the entire property.

Mr. Gordon: So, a green area will be drive to drive?

Mr. Wayne Rawan: When you say drive to drive, where exactly do you mean?

Mr. Gordon: You would connect the driveways.

Mr. Wayne Rawan: Correct.

Mr. Gordon: One on either end.

Mr. Wayne Rawan: This is along Route 9?

Mr. Gordon: I'm talking about Route 9 here.

Mr. Wayne Rawan: Yes, we just haven't gotten to that level yet in the design center but the next stage is to bring that part in.

Mr. Gordon: When would that be?

Mr. Wayne Rawan: This spring. We're working on it now. This will be this spring.

Mr. Gordon: So, that could be part of this?

Mr. Serrato: The only thing I would like to add to that is that you wouldn't have 5 ft., I believe, from the property line to where the sign is. So, they might have 5 ft. of grass here and it might come to the sign, narrow down to a point and then get wide again. They don't want to have to move that whole pylon.

Mr. Gordon: Sounds good to me.

Mr. Wayne Rawan: Yes, we plan on doing that. There's actually an area where the sign is set back where we've already made an area for all landscaping and things of that nature.

Mr. Gordon: The total amount of the signage will not exceed the amount of signage they are entitled to?

Mr. Alarie: We have to take into account all tenant spaces. Both banks and all of the tenant spaces within the main building all have to be within that one for one allowance.

Mr. Serrato: If I may, there was a company they hired last February that did some calculations. With all of the signs that they have removed when they remodeled the building, right now, with everything they have left on the building, including the pylon the way it is, they are about 400 sq. ft. below what's allowed.

Mr. Rosen: Ron, would that take into account the sign that they came in for a variance last year?

Mr. Alarie: That was denied, Mr. Rosen. They brought that sign into compliance.

Mr. Gordon: That wasn't last year.

Mr. Rosen: No, no. There was one a couple of years ago.

Mr. Gordon: Oh, that was for Drew.

Mr. Alarie: Yes, that was for Drew Mortgage. Yes, that would be included. That's an existing variance and would be counted towards their total.

Mr. Gordon: I believe that was done a different way. Those are individual letters and calculated a different way, Ron?

Mr. Alarie: Yes.

Mr. Rosen: So, including that sign, they would still be under?

Mr. Alarie: That would be included in their total computations and, again, they have not asked for that relief.

Mr. Wayne Rawan: Do you like the improvements that we've made?

Mr. Gordon: Oh, I think they're beautiful. I would have added another story if I had the money.

Mr. Wayne Rawan: We are.

Mr. Gordon: Well, good.

Mr. Wayne Rawan: You know I'm glad you mentioned that.

Mr. Gordon: I would like the green space before the second story goes up.

Mr. Wayne Rawan: It was part of it.

Mr. Serrato: One thing I am showing on this, and I don't want somebody to think that I tried to avoid this, but part of the pylon sign that's right below Drew Mortgage, if you notice it, says "Low Mortgage Rates." What they were also hoping to do is put an electronic message center in that area. What they are willing to do on that is they don't want it to be a flashing sign. They want to be able to electronically change the message during the day. It wouldn't flash every 20, 30 seconds. They want to keep it up maybe a half hour a day.

Mr. Salerno: Which one would be the electronic one?

Mr. Serrato: Where you see Drew Mortgage's Associates, it's right below where you see "Low Mortgage Rates."

Mr. Salerno: That's the darkened portion on this?

Mr. Serrato: Yes, sir.

Mr. Salerno: You want that to be an electronic scroll? Is that what you're asking?

Mr. Serrato: It's going to be an electronic message center, but they don't want to have it scroll. They want to be able to leave the message up there for a period of time.

Mr. Salerno: What's that?

Mr. Serrato: Fifteen minutes, half an hour.

Mr. Wayne Rawan: Or a day if it's the board's decision to give us one message per day. Whatever you would consider allowing us to do, we would be appreciative of.

Mr. Serrato: They were hoping that instead of having a changeable message, which to me isn't as classy, they could have this electronic one. The color could be amber in color and not have a flashy red, but have a classy look. But, the message would be up there for a period of time that we would hope would be acceptable to the board.

Mr. Salerno: How large is that going to be?

Mr. Serrato: The character height of "Low Mortgage Rates" right now is 16 in. and it spans 10 ft.

Mr. Wright: That would be in the amber, not in the red?

Mr. Serrato: Correct. That's a concern of the boys that it not be in red.

Mr. George: So, that would be in the part of the Drew Mortgage sign?

Mr. Serrato: That's correct.

Mr. Salerno: Isn't there a scroll sign in that area?

Mr. Gordon: That's at Ziebart.

Mr. Salerno: With time and temperature? Commerce Bank has that?

Mr. Gordon: Commerce Bank has time and temperature.

Mr. Salerno: But, no text?

Mr. Gordon: Not that I'm aware of.

Mr. Serrato: Commerce Bank is what they call full view time and temp and this message just stays.

Mr. Salerno: Right, but no text?

Mr. Serrato: Correct.

Mr. Wayne Rawan: There are different ideas where people put stock messages up. We're not interested in doing that. We're just interested in keeping a quote for the day or a rate for the day or a message for the day and the message would stay there.

Mr. Salerno: So, you would be happy if it was restricted to a daily message?

Mr. Wayne Rawan: Yes, that would be fine. That would be fine. We would be appreciative of anything you could do for us.

Mr. Salerno: Is there anybody in attendance this evening that wants to comment on this petition? Seeing no further comment, we'll take the matter under advisement, vote at the end of the meeting and notify you of our decision.

The decision of the board is on the following page.

#### Decision

On April 29, 2003 the Zoning Board of Appeals unanimously voted to grant the appeal of Rawan Realty/Serrato Signs, 15 Dewey Street, Worcester, MA, for a

variance to the Town of Shrewsbury Zoning Bylaw, Section VII, Subsection E-2, and a special permit as required by Section IV, Subsection B, to allow the removal and replacement of existing signs situated upon property located at 196 Boston Tpke. and to allow individual signs in excess of 20 sq. ft. upon said property.

The board reviewed the appellant's proposal to reconfigure the old, existing signage, both the pylon signs and those attached to the building, situated upon the subject premises and found that, due to the size and placement of these signs, the literal application of the current applicable regulations would impose a substantial hardship to the owners of this site in their desire to modernize its appearance. They noted that many of the existing signs date back to the use of this property as a market and are not uniform in size, shape, color or appearance. They further noted that both the interior and exterior of the existing building is currently being renovated and that its appearance has been significantly enhanced over the past several months. The board felt that the granting of the relief requested that would result in the installation of new, uniform signage would further enhance the appearance of this site without materially derogating from either the intent or the purpose of the bylaw. It was, therefore, unanimously voted to grant the appeal as presented to the board subject to the following conditions:

1. The proposed signs shall be installed substantially in accordance with the renderings presented to the board.
2. The copy on the electronic message board installed as part of the front pylon sign shall not change more than once in any 24 hour period. The copy shall be of amber lighting on a black or green background.
3. A minimum 5 ft. wide landscaped area shall be provided along the Route 9 frontage in front of the subject building. This area shall extend between the two main entrance/exit openings from Route 9 to this site.

Vote

Mr. Salerno	Yes
Mr. George	Yes
Mr. Gordon	Yes
Mr. Rosen	Yes
Mr. Wright	Yes

PUBLIC HEARING: Tanela, Inc., 525 Hartford Tpke., Shrewsbury, MA.

PURPOSE: To hear the appeal of Tanela, Inc., 525 Hartford Tpke., Shrewsbury, MA, for a special permit as required by the Town of Shrewsbury

Zoning Bylaw, Section IV, Subsection B, to allow the use of property located at 525 Hartford Tpke. for the live entertainment. The subject premises is described on the Shrewsbury Assessor's Tax Plate 48 as Plot 12.

PRESENT: Paul M. George, Chairman Pro-tem, Melvin P. Gordon Ronald I Rosen, Jonathan B. Wright, Alfred E. Confalone and Ronald S. Alarie, Building Inspector.

Withdrawn by the appellant.